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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,048	01/17/2002	Paul M. Davis	1073.9370001/DKSC/RLP	1191
26111	7590	11/03/2003	EXAMINER	
STERNE, KESSLER, GOLDSTEIN & FOX PLLC 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			PATTERSON, MARIE D	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 11/03/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/050,048

Applicant(s)

DAVIS ET AL.

Examiner

Marie Patterson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23, 25-36 and 38 is/are pending in the application.
- 4a) Of the above claim(s) 7, 16, 21-23 and 25-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-15, 17-20, and 38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Election/Restriction

1. Claims 7, 16, 21-23, and 25-36 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a non-elected invention, there being no allowable generic or linking claim, election was made without in Paper No. 10.

Claim Rejections – 35 USC 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, and 8 are rejection under 35 U.S. C. 102 (b) as being anticipated by Ivany (4621648).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-5, 10-14, 19, 20, and 38 are rejected under 35 U.S.C. 103(a) as being under 35 U.S.C. 103(a) as being unpatentable over Friton (4486965) in view of Kennedy (5744080).

Friton shows footwear comprising a sole (12), an upper (14), a portion formed from a material with one side having a plurality of hooks (125) and a second side having loops

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(138 and 139), the portion comprising straps (124 and 126) and vamp portions (136, shown in figures 8 and 9) which are at the throat area of the footwear substantially as claimed except for the exact method of providing the hook and loop fastening materials. Kennedy teaches providing material with hooks on one side and loops on the other side by forming such as a single ply (see figures 7 and 8) to overcome the difficulties resulting from adhesives, sewing, and other methods of providing the hooks and loop elements (see column 1 lines 55-60, column 2 lines 1-5, and 43-62). It would have been obvious to provide the hook and loop materials by forming the portions from single ply material which has these elements integrally formed as taught by Kennedy in the footwear of Friton to reduce bulk, prevent separation of the hook and loop materials, to reduce stiffness, and to make the shoe easier and quicker to produce (due to the manufacturer no having to attach the hook and loops).

6. Claims 1-3, 5, 6, 10-12, 14, 15, 19, 20, and 38 are rejected under 35 U.S.C. 103(a) as being under 35 U.S.C. 103(a) as being unpatentable over Famolare, Jr. (4114297) in view of Kennedy (5744080).

Famolare, Jr. shows footwear comprising a sole (12), an upper (11), a portion with a plurality of "Velcro" (hook and loop) fasteners (20) which extends from the throat of the footwear to the sole, and a strap (26) substantially as claimed except for the exact method of providing the hook and loop fastening materials. Kennedy teaches providing material with hooks on one side and loops on the other side by forming such as a single ply (see figures 7 and 8) to overcome the difficulties resulting from adhesives, sewing, and other methods of providing the hooks and loop elements (see column 1 lines 55-60,

column 2 lines 1-5, and 43-62). It would have been obvious to provide the hook and loop materials by forming the portions from single ply material which has these elements integrally formed as taught by Kennedy in the footwear of Famolare, Jr. to reduce bulk, prevent separation of the hook and loop materials, to reduce stiffness, and to make the shoe easier and quicker to produce (due to the manufacturer no having to attach the hook and loops).

7. Claim 20 is rejected under 35 U.S.C. 103(a) as being under 35 U.S.C. 103(a) as being unpatentable over Cherubini (5015251) in view of Kennedy (5744080).

Cherubini shows an article of clothing with an opening (shown in figure 4) in which a human portion (32) is placed and it being formed from a material with hooks (21) on one side and pile (20) on the other substantially as claimed except for the exact method of providing the hook and loop fastening materials. Kennedy teaches providing material with hooks on one side and loops on the other side by forming such as a single ply (see figures 7 and 8) to overcome the difficulties resulting from adhesives, sewing, and other methods of providing the hooks and loop elements (see column 1 lines 55-60, column 2 lines 1-5, and 43-62). It would have been obvious to provide the hook and loop materials by forming the portions from single ply material which has these elements integrally formed as taught by Kennedy in the clothing of Cherubini to reduce bulk, prevent separation of the hook and loop materials, to reduce stiffness, and to make the shoe easier and quicker to produce (due to the manufacturer no having to attach the hook and loops).

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8. Claims 1-5, 8, 11-14, 17, 19, 20, and 38 are rejected under 35 U.S.C. 103(a) as being under 35 U.S.C. 103(a) as being unpatentable over Williams (4969277) in view of Kennedy (5744080).

Famolare, Jr. shows footwear comprising a sole (15), an upper (17 and 19), a portion with a plurality of hooks (63/71), two straps (55 and 59), and one strap being a heel strap (59) substantially as claimed except for the exact method of providing the hook and loop fastening materials. Kennedy teaches providing material with hooks on one side and loops on the other side by forming such as a single ply (see figures 7 and 8) to overcome the difficulties resulting from adhesives, sewing, and other methods of providing the hooks and loop elements (see column 1 lines 55-60, column 2 lines 1-5, and 43-62). It would have been obvious to provide the hook and loop materials by forming the portions from single ply material which has these elements integrally formed as taught by Kennedy in the footwear of Williams to reduce bulk, prevent separation of the hook and loop materials, to reduce stiffness, and to make the shoe easier and quicker to produce (due to the manufacturer no having to attach the hook and loops).

9. Claims 9 and 18 are rejected under 35 U.S.C. 103(a) as being under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-5, 8, 11-14, 17, 20, and 38 above, further in view of Kuehnreich (5176624).

Williams as modified above shows footwear substantially as claimed except for the heel portion being formed of two overlapping straps. Kuehnreich teaches forming a heel area as two overlapping straps (10 and 11). It would have been obvious to form

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the heel as two overlapping straps as taught by Kuehnreich in the footwear of Williams as modified above to increase the adjustability of the footwear in the heel area.

10. Claims 10, 20, and 38 are rejected under 35 U.S.C. 103(a) as being under 35 U.S.C. 103(a) as being unpatentable over Ivany (4621648).in view of Kennedy (5744080).

Ivany shows footwear/clothing with a portion formed from a material with hook elements on one side and pile element on the other (22 and 24) substantially as claimed except for the exact method of providing the hook and loop fastening materials. Kennedy teaches providing material with hooks on one side and loops on the other side by forming such as a single ply (see figures 7 and 8) to overcome the difficulties resulting from adhesives, sewing, and other methods of providing the hooks and loop elements (see column 1 lines 55-60, column 2 lines 1-5, and 43-62). It would have been obvious to provide the hook and loop materials by forming the portions from single ply material which has these elements integrally formed as taught by Kennedy in the footwear of Ivany to reduce bulk, prevent separation of the hook and loop materials, to reduce stiffness, and to make the shoe easier and quicker to produce (due to the manufacturer no having to attach the hook and loops).

Response to Arguments

11. Applicant's arguments filed 9/30/03 have been fully considered but they are not persuasive.

In response to applicants' arguments directed towards "clothing", the straps shown by the prior art references, including bandages, are considered to be articles of clothing, i.e. "a garment or covering for the body" as defined by Websters' New Word Dictionary.

In response to applicants' arguments directed towards Kennedy, Kennedy clearly states and discloses a material (see column 1 lines 9-10 which state "this invention relates to an improved fastener of the hook and loop type and a method for producing..."). Clearly a material is disclosed and taught if the method for making such is disclosed.

In response to applicants' arguments directed towards the motivation to combine Kennedy with the other cited prior art references, Kennedy teaches providing material with hooks on one side and loops on the other side by forming such as a single ply (see figures 7 and 8) to overcome the difficulties resulting from adhesives, sewing, and other methods of providing the hooks and loop elements (see column 1 lines 55-60, column 2 lines 1-5, and 43-62) .

In response to applicants' arguments directed towards the combination of references, the resultant footwear and/or clothing as suggested by the combinations recited above would inherently result in the portions of the footwear/clothing having hooks opposite everywhere the other side of the portion has pile, due to the use of material and methods taught and disclosed by Kennedy.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

1. Telephone inquiries regarding the status of application or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the Examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148 or the **Tech Center 3700 Customer Service Center number is (703) 306-5648**. For applicant's convenience, the Group Technological Center FAX number is (703) 872-9306. (Note that the Examiner **cannot** confirm receipt of faxes) Please identify Examiner _____ of Art Unit _____ at the top of your cover sheet of any correspondence submitted.

Inquiries only concerning the **merits** of the examination should be directed to Marie Patterson whose telephone number is (703) 308-0069.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g. copies of references cited, form PTO-1449, for PTO-892, etc. requests for copies of such papers should be directed to (703) 308-1337.

Check out our web-site at "www.uspto.gov" for fees and other useful information.



Marie Patterson
Primary Examiner
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